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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ...

DENNIS B. PITMAN and MAY DELL PITMAN,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

No. [redacted] 150

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

and

BRIEF IN SUPPORT THEREOF.

WILLIAM H. ALLEN,
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UNITED STATES OF AMERICA,
Respondent.
No. .....

PETITION FOR WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now Dennis B. Pitman and May Dell Pitman, his wife, and respectfully petition this Honorable Court to grant a writ of certiorari to review the opinion and judgment of the United States Circuit Court of Appeals for

the Eighth Circuit rendered and entered on the 9th day of April, 1946, in this case, lately pending in said Court of Appeals entitled United States of America, Appellant, v. Dennis B. Pitman and May Dell Pitman, Appellees, No. 13228 on the docket of said Court of Appeals, reversing a judgment of the United States District Court for the Eastern Division of the Eastern District of Missouri (Division 1, presided over by Hon. George H. Moore, District Judge) in said cause in favor of your petitioners and against respondent, United States of America, with directions; said opinion of the Court of Appeals being a memorandum opinion (R. 295) wherein that Court referred to its opinion in the companion case of Oliver et al., Appellants, v. United States of America, Appellee, No. 13174 in said Court of Appeals, as stating the reasons for the entry, on the same day, of its said judgment in this cause (R. 306).

OPINIONS OF THE COURT BELOW.

The said memorandum opinion of the United States Circuit Court of Appeals for the Eighth Circuit in this cause, entitled United States of America, Appellant, v. Dennis B. Pitman and May Dell Pitman, Appellees, appears on pages 295 and 296 of the printed transcript of the record filed herewith; and the opinion of said Court of Appeals in said cause of Oliver et al., Appellants, v. United States of America, Appellee, referred to by the Court in its said memorandum opinion in this cause, appears at pages 296 to 303, inclusive, of said printed transcript of the record. Said opinions have not as yet been published.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

On November 7, 1940, these petitioners being the owners of certain lands in St. Charles County, Missouri, signed and delivered to respondent a written option (R. 237) whereby they agreed to sell and convey said lands to respondent, referred to therein as the Government, free and clear of liens and encumbrances, for the price and consideration of $35,000.00. Said written option further provided as follows:

> "If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings."

Thereafter, on the 14th day of November, 1940, said option was duly accepted by respondent, United States of America, and became a binding contract between the parties (R. 242), and is hereinafter referred to as the "option contract." Thereafter, on the 19th day of June, 1941, no part of said price or consideration provided by said contract to be paid to these petitioners having been paid by respondent, respondent instituted this proceeding, a condemnation suit, in the United States District Court for the Eastern Division of the Eastern District of Missouri, making petitioners parties defendant, for the condemnation of said lands, by the filing by respondent of a petition in condemnation (R. 204-216, inclusive), describing said

lands and praying among other things, that the defendants therein and each of them be divested of all right, title and interest in and to said lands and that the title thereto in fee simple be vested in the plaintiff (this respondent) and that the court immediately make an order to that effect pursuant to the Act of Congress approved February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., Sec. 258a (R. 215). On the same day respondent, as plaintiff in this condemnation suit, filed in said District Court a Declaration of Taking, declaring that the lands were taken under and in accordance with said Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., Sec. 258a, and other Acts of Congress therein mentioned (R. 217); said Declaration of Taking reciting that the estimated compensation for the taking of said lands was $14,600.00. And on the same day said District Court, at the instance of respondent, entered its Order and Judgment on Declaration of Taking (R. 221-227, inclusive), describing said lands, ordering and adjudging that "said land is deemed to be condemned and taken for the use of the United States of America, and the right to just compensation for the property so taken is vested in the persons entitled thereto, and the amount of just compensation for said land involved in this condemnation proceeding shall be ascertained and awarded in said proceeding and established by judgment herein pursuant to law." And on the same day respondent caused to be deposited in the registry of said District Court the said sum of $14,600.00 as the estimated compensation for the taking of said lands (R. 227).

Thereafter, on the 3rd day of September, 1941, within the time allowed therefor by said District Court, these petitioners, Dennis B. Pitman and May Dell Pitman, filed their answer to said petition in condemnation (R. 228-242, inclusive), wherein petitioners pleaded said option contract and alleged that they were entitled thereunder to have the award in the condemnation proceeding fixed at the sum

of $35,000, the valuation agreed upon in said contract, and prayed that the court, by its judgment, order and decree, so fix said award, require respondent pay the balance thereof into the registry of the court, and for interest.

No further proceedings were had in this case (except orders and matters relating to the distribution of the said sum of $14,600.00 deposited in the registry of the court) until after the decision of this Honorable Court in Muschany v. United States and Andrews v. United States, 324 U. S. 49, 65 S. Ct. 442, being companion cases to this case, involving the same option contract, which cases were appealed to the United States Circuit Court of Appeals for the Eighth Circuit and reached this Court on certiorari and were decided by this Court on February 5, 1945, and wherein this Court held the option contracts to be valid and that each operated to fix the amount of the award in each proceeding at the amount agreed upon in option contract.

Thereafter, on April 17, 1945, respondent, as plaintiff in this condemnation suit, filed in said District Court a motion for judgment for the plaintiff therein in condemnation, and for the defendants (these petitioners) fixing the total compensation to be paid by respondent for the taking of said lands at said sum of $35,000.00, without interest (R. 243, 244); and thereafter, on May 4, 1945, petitioners filed their answer to respondent's said motion, together with their counter-motion praying that the Court by its judgment fix the compensation to be paid by respondent for the taking of said lands at said sum of $35,000.00 plus interest on said deficiency of $20,400.00 which had not been paid into the registry of the court, at six per cent. per annum from and after June 19, 1941, the date of the filing of said Declaration of Taking, and praying that the court require respondent to pay into the registry of the court said sum of $20,400 with interest as aforesaid.

Thereafter, during the pendency of said motion, to wit,

on May 17, 1945, respondent paid said deficiency of $20,400 into the registry of said court in this cause, No. 997 in said District Court (R. 247, 248).

And thereafter, on June 8, 1945, said District Court rendered and filed its opinion in this cause and other companion condemnation proceedings pending in said Division No. 1 of said District Court, involving the same option contract and the same questions (R. 249-267, inclusive); and, pursuant to said opinion said District Court, on June 30, 1945, made and entered its "Findings and Judgment" in this cause (R. 267-276, inclusive), awarding respondent judgment in condemnation against the lands and adjudging that the title thereto in fee simple absolute be vested in respondent (R. 275), and awarding these petitioners said sum of $35,000.00 as and for the agreed value of said lands as of the date of the filing of said Declaration of Taking, with interest on said deficiency of $20,400.00 at six per cent. per annum from said June 19, 1941, until May 17, 1945, amounting to $4787.20, adjudging that said sum of $35,000.00 and said interest should constitute the full just compensation for said lands, and ordering that respondent forthwith pay said sum of $4787.20 into the registry of the court (R. 276).

Thereafter, respondent, on July 7, 1945, filed in said District Court its motion for a new trial (R. 277), which was overruled on November 21, 1945 (R. 282), and thereafter, in due course, appealed this cause to the United States Circuit Court of Appeals for the Eighth Circuit, where said appeal was perfected and the cause was, on the 8th day of March, 1946, argued by counsel and submitted upon said argument and briefs of counsel and was taken under advisement by the court (R. 292, 293). Thereafter, on April 9, 1946, said Court of Appeals filed its said memorandum opinion in this cause (R. 295) and entered its judgment herein reversing the judgment of said District Court therein and remanding said cause (R. 306), and on

the same day filed its opinion in said cause of Oliver et al. v. United States, No. 13174 in said Court of Appeals (R. 297-303), to which opinion said Court of Appeals referred in its said memorandum opinion in this cause as stating the reasons for its said ruling and judgment in this cause.

Thereafter, on the 22d day of April, 1946, and within the time allowed therefor by the rules of the Court of Appeals, petitioners duly filed in this cause in said Court of Appeals, their petition for a rehearing of this cause (R. 343-347), which petition for a rehearing was, on the 30th day of April, 1946, denied by said Court of Appeals (R. 349), on which day said judgment of said Court of Appeal in this cause became final.

The duly certified record, including all of the proceedings in this cause in said District Court and in said Court of Appeals is filed herewith under separate cover, together with the requisite number of printed copies thereof.

JURISDICTION OF THIS COURT.

The jurisdiction of this Court is based upon Section 240 of the Judicial Code, 36 Stat. 1157, as amended by the Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938; Title 28, U. S. C. A., Sec. 347, providing for review by this Court, by certiorari, of decisions of the Circuit Courts of Appeals. The judgment of the United States Circuit Court of Appeals for the Eighth Circuit here sought to be reviewed was entered on April 9, 1946 (R. 306). A petition for a rehearing was duly filed by these petitioners, appellees in said Circuit Court of Appeals, on April 22, 1946, within the time provided by the rules of said Circuit Court of Appeals (R. 343-347), and said petition for a rehearing was denied by said Circuit Court of Appeals on April 30, 1946 (R. 349). Among the cases thought to sustain the jurisdiction are:

Muschaney v. United States, 324 U. S. 49;
Danforth v. United States, 308 U. S. 271.

QUESTIONS PRESENTED.

The questions presented by petitioners' petition herein for a writ of certiorari are:

(1) Whether, in this condemnation suit instituted by respondent against petitioners as landowners under the Declaration of Taking Statute (Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., Sec. 258a) for the condemnation of the lands described in the petition (R. 204), these petitioners are entitled to interest on that portion of the amount finally awarded as the value of the property as of the date of taking which was not paid into court at the time of the taking by the filing of the declaration, where prior to the institution of the suit petitioners and respondent had entered into a written contract for the sale of said lands to respondent for the price of $35,000.00 (R. 237), wherein it was agreed that if respondent should institute proceedings to acquire title to the lands by condemnation the award therein should be fixed at the agreed valuation named in said contract and forthwith paid into court, but respondent, in attempted repudiation of the contract, deposited in court only $14,600.00 upon the institution of this suit, prayed for the appointment of commissioners to fix the award, and litigated the question of the validity of the contract until this Court, in companion cases, had held that the contract was valid and operated to fix the proper condemnation award, and did not pay the balance of said agreed award into court until nearly four years after the taking.

(2) Whether the Court of Appeals, by its opinion and judgment in this cause (R. 295, 306), rendered and entered for the reasons stated by that Court in its opinion in the companion case of Oliver et al. v. United States of America (R. 296), denied petitioners a right to which they are law-

fully entitled under the Declaration of Taking Statute (Act of Congress approved February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., sec. 258a); the right, specifically set up and claimed by them, to have the judgment herein include, as a part of just compensation, interest on that portion of the amount finally awarded as the value of the property as of the date of taking which was not paid into court by respondent until nearly four years after the taking by the filing of the declaration of taking.

(3) Whether the ruling and judgment of the Court of Appeals in this cause (R. 295, 306), made and entered for the reasons stated by that court in its opinion in the companion case of Oliver et al. v. United States of America (R. 296), denying these petitioners any interest on that part of the amount finally awarded as the value of the property at the time of the taking that was not paid into court by respondent until nearly four years after the taking by the filing of the declaration of taking, operates to allow respondent to take the private property of petitioners for a public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) Since in this condemnation suit, brought under the Declaration of Taking Statute (Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., sec. 258a), there was a taking of the title to the property on June 19, 1941, by the filing by respondent of a declaration of taking, and the amount finally awarded petitioners as for the value of the property at the time of the taking was $35,000.00, but respondent, on said June 19, 1941, paid into court only $14,600.00 and did not make the deficiency of $20,400.00 available to

petitioners until May 17, 1945, petitioners are entitled to interest on said deficiency from June 19, 1941, to May 17, 1945, at six per cent. per annum; and the decision of the Court of Appeals to the contrary is erroneous, violative of said statute, and in conflict with applicable decisions of this Court holding that where there has been a taking or appropriation of the private property of a citizen for a public use without the payment in full of the amount of a subsequent award of damages as for the value of the property at the time of the taking, the right of the owner to interest, or a fair equivalent, automatically attaches itself to such award, among which are:

Shoshone Tribe of Indians v. United States, 299 U. S. 476;
Jacobs v. United States, 290 U. S. 13, 16;
Seaboard Air Line Railway Co. v. United States, 261 U. S. 299;
United States v. Rogers, 255 U. S. 163.

(2) The decision of the Court of Appeals holding that petitioners are not entitled to interest, though the major portion of the final award, as for the value of the property at the time of the taking, fixed pursuant to the prior agreement of the parties, was not paid into Court until long after the taking, is erroneous and in conflict with the applicable decisions of this Court holding that wherever private property of a citizen is taken by the Government for public use the owner is not limited to the value of the property at the time of the taking, but is entitled, as a part of just compensation, to such additional sum as will produce the full equivalent of that value paid contemporaneously with the taking, among which are:

Jacobs v. United States, 290 U. S. 13, 16;
Phelps v. United States, 274 U. S. 341;
Liggett & Myers Co. v. United States, 274 U. S. 215;
Brooks-Scanlon Corp. v. United States, 265 U. S. 106.

(3) The decision of the Court of Appeals that petitioners are not entitled to interest, though the major portion of the amount finally awarded them as the value of the property at the time of the taking was withheld by respondent from the registry of the court for nearly four years, on the theory that the purchase price named in the option contract entered into by the parties prior to the institution of this suit, which became the amount of such award, constituted the agreed equivalent of just compensation, is erroneous and in direct conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in a case wherein that court sustained the landowners' right to interest upon the amount agreed upon as compensation, for the period that same was thereafter withheld from the registry of the court, namely:

United States v. Baugh, 149 Fed. (2) 190.

(4) The decision of the Court of Appeals that petitioners are not entitled to interest, though the major portion of the amount finally awarded them as the value of the property at the time of the taking was withheld by respondent from the registry of the court for nearly four years, on the theory that petitioners, by successfully insisting upon the validity of the option contract as fixing the proper condemnation award, converted this case from a condemnation suit into one controlled, as to the amount recoverable, by the terms of the contract and hence the allowance of interest would be tantamount to allowing interest on a contract obligation of the United States not providing for interest, is erroneous and in conflict with the decisions of this Court in

Muschany and Andrews v. United States, 324 U. S. 24;

Danforth v. United States, 308 U. S. 271.

(5) The Court of Appeals, by its decision in this cause,

holding and deciding that petitioners are not entitled to interest on that portion of the amount finally awarded them as the value of the property at the time of the taking which was not paid into court for nearly four years after the taking, has denied petitioners a right, specifically set up and claimed by them, to which they are lawfully entitled under the Declaration of Taking Statute (Act of February 26, 1931, 46 Stat. 1421, 40 U.S. C. A., sec. 258a) and the right, as well, to just compensation for the taking of their property vouchsafed to them by the Fifth Amendment to the Constitution of the United States. It is respectfully submitted that the denial to petitioners of such rights plainly calls for the issuance by this Court of its writ of certiorari.

(6) The question of the right of landowners to interest under like circumstances is involved in numerous other cases growing out of the acquisition by the United States of a large tract of land near Weldon Spring in St. Charles County, Missouri, for use as a location for a Government ordnance plant. It is a matter of public and far reaching importance. It is a question that has not been determined by this Court, and should be settled by this Court. And the decision of the Court of Appeals herein, being in conflict with a decision of another Court of Appeals, would, if permitted to stand, serve only to bring about conflict of decision and confusion in the law. It is therefore respectfully submitted that this Court's writ of certiorari should issue herein.

PRAYER.

Wherefore, petitioner prays that a writ of certiorari be issued by this Honorable Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, to the end that said opinion and judgment of said Court of

Appeals in said cause of United States of America, Appellant, v. Dennis B. Pitman and May Dell Pitman, Appellees, No. 13228 in said Court of Appeals, be reviewed by this Court, as provided by law, and that, upon such review, said judgment of said Court of Appeals be reversed, and that petitioners have such other relief as this Court may deem appropriate.

Respectfully submitted,

.....

WILLIAM H. ALLEN,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit in said cause of United States of America, Appellant, v. Dennis B. Pitman and May Dell Pitman, Appellees, which petitioners here seek to have reviewed, appears on page 306 of the printed transcript of the record filed herewith; and the opinion of that court in Oliver et al. v. United States of America, referred to by the court in its opinion in this cause as stating the reasons for its opinion and judgment herein appears on pages 296 to 303, inclusive, of said printed transcript.

STATEMENT OF THE CASE.

The essential facts of the case are fully stated in petitioners' petition for a writ of certiorari herein, and in the interest of brevity are not repeated here. Reference will be made to such facts, on the points involved, in the course of the argument which follows.

SPECIFICATIONS OF ERROR TO BE URGED.

The United States Circuit Court of Appeals for the Eighth Circuit in its opinion in this cause (R. 306) and in its opinion in Oliver et al. v. United States (R. 296-303) to which the court referred in its opinion herein as stating the reasons for its decision in this case, erred:

(1) In holding and deciding that petitioners are not entitled to interest on that portion of the amount finally awarded them in this condemnation suit as for the agreed

value of their property at the time of the taking which was not paid into court by respondent at the time of the filing of the declaration of taking, but which was withheld by respondent from the registry of the court for nearly four years.

(2) In holding and deciding that the purchase price fixed by the option contract entered into between the parties prior to the institution of this condemnation suit constituted the agreed equivalent of just compensation for the taking of the lands by condemnation, though the major portion thereof was withheld from the registry of the court for nearly four years.

(3) In holding and deciding that the landowners, by their successful defense of the validity of the option contract, converted the condemnation suit into one controlled as to the amount of their recovery by the terms of the option contract.

(4) In holding and deciding that the allowance of interest would be tantamount to awarding interest against the United States on a contract obligation not providing for interest.

(5) The decision of the Court of Appeals deprives petitioners of their right to interest under the terms of the very statute (Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. A., sec. 258a) under which respondent brought this suit and filed its declaration of taking, and their right to just compensation under the Fifth Amendment to the Constitution of the United States.

SUMMARY OF THE ARGUMENT.

I.

Since there was a taking of petitioners' property prior to the payment in full of the amount finally awarded them in the condemnation proceeding as the agreed value of the land at the time of the taking, respondent is liable for interest on so much of that award as was not paid by it into the registry of the court at the time of the taking by the filing of the declaration of taking, from that time and until the same was made available to petitioners.

Shoshone Tribe of Indians v. United States, 299 U. S. 476;
Jacobs v. United States, 290 U. S. 13, 16;
Seaboard Air Line Railway Co. v. United States, 261 U. S. 299;
Brooks-Scanlon Corp. v. United States, 265 U. S. 106, 123;
United States v. Rogers, 255 U. S. 163.

(1)

Wherever there has been a taking or appropriation by the Government of private property for a public use, the right to interest, or a fair equivalent, on so much of a subsequent award of damages as was not paid or made available to the owner at the time of the taking attaches itself automatically to such award.

Shoshone Tribe of Indians v. United States, 299 U. S. 476, 497;
Jacobs v. United States, 290 U. S. 13, 16;
Seaboard Air Line Railway Co. v. United States, 261 U. S. 299.

(2)

The owner is not limited to the value of the property at the time of the taking, but is entitled, as a part of just compensation, to such additional sum as will produce the full equivalent of that value paid cotemporaneously with the taking.

Jacobs v. United States, 290 U. S. 13, 16;
Phelps v. United States, 274 U. S. 341;
Liggett & Myers Co. v. United States, 274 U. S. 215;
Brooks-Scanlon Corp. v. United States, 265 U. S. 106.

(3)

And by the express terms of the statute under which this condemnation suit was brought, petitioners are entitled to interest, at six per cent. per annum, on that part of the amount finally awarded as the value of the land as of the time of the taking by the filing of the declaration of taking that was not paid into court at the time of such taking.

Act of February 26, 1931, 46 Stat. 1421 (40 U. S. C. A., Sec. 258a).

II.

The ruling of the Court of Appeals that petitioners are not entitled to interest on that portion of the amount finally awarded as the value of the property at the time of the taking that was withheld from the registry of the court for nearly four years, on the theory that the purchase price named in the prior option contract, which became the amount of such final award, constituted the agreed equivalent of just compensation, is manifestly unsound and in direct conflict with the decision of the Court of Appeals for the Fifth Circuit in:

United States v. Baugh, 149 Fed. (2) 190.

(1)

The contract previously entered into between the parties performed, in this suit, the function merely of fixing the condemnation award, as for the value of the property at the time of the taking, at the agreed valuation named in the contract.

Muschany v. United States and Andrews v. United States, 324 U. S. 49;
Danforth v. United States, 308 U. S. 271.

III.

The ruling of the Court of Appeals that the landowners, by successfully insisting upon the validity of the contract, converted this case from a condemnation suit into one controlled as to the amount recoverable by the terms of the contract, and that thence to allow interest would be tantamount to allowing interest on a contract obligation of the United States not providing for interest, is also plainly unsound.

(1)

The suit could not thus be converted into something other than that which the record throughout shows it to be. It remained a conventional, statutory, condemnation suit; one in which the condemnation award, as for the value of the property at the time of the taking, had been fixed by agreement of the parties.

Muschany v. United States and Andrews v. United States, 324 U. S. 49;
Danforth v. United States, 308 U. S. 271.

(2)

And the rule that interest does not run upon a claim against the United States in the absence of a contract or statute evidencing a contrary intention was not violated

by the District Court in allowing the interest claimed by petitioners. Interest was claimed and allowed, not on the contract, but under the terms of the statute under which the condemnation suit was brought, and as constituting a part of the just compensation guaranteed petitioners by the Fifth Amendment to the Constitution of the United States. The right to interest is neither found in nor lost by the contract.

United States v. Baugh, 149 Fed. (2) 190.

IV.

And petitioners' claim to interest, though not based on the contract, is in no wise inconsistent therewith, since the contract implied, as a matter of law, that if respondent should resort to condemnation and should not pay the full agreed valuation into court upon the institution of the suit, petitioners would be entitled to interest in accordance with the law of the land applicable to condemnation proceedings. The law of the land is read into every contract and becomes an integral part thereof.

Farmers and Merchants Bank of Monroe v. Federal Reserve Bank, 262 U. S. 649;
McCullough v. Virginia, 172 U. S. 102, 124;
Ogden v. Saunders, 25 U. S. (Wheat. 12) 213;
United States v. Baugh, 149 Fed. (2) 190;
17 C. J. S. 782;
12 Amer. Jur. 769, sec. 240.

ARGUMENT.

Since there was a taking of petitioners' property prior to the payment in full of the amount finally awarded them in the condemnation proceeding as the agreed value of the land at the time of the taking, respondent is liable for interest on so much of that award as was not paid by it into the registry of the court at the time of the taking by the filing of the declaration of taking, from that time and until the same was made available to petitioners.

Though respondent, by the option contract entered into between the parties in November, 1940 (R. 237), agreed to pay petitioners the purchase price named therein, to-wit, $35,000.00, and immediately took possession of the lands (R. 269), respondent paid petitioners no part of said contract price, but attempted to repudiate the contract, and on June 19, 1941, instituted, in the District Court, this condemnation suit under the Declaration of Taking Statute (Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. A. sec. 258a), by the filing of its petition and declaration of taking. And though the contract expressly provided that if respondent should proceed to acquire title to the lands by condemnation, the condemnation award should be fixed at the agreed valuation named in the contract (R. 242), respondent, upon filing the suit, paid into court only $14,600.00, and prayed for the appointment of Commissioners to fix the award. It was not until after the decision of this Court in the companion cases of **Miuschany v. United States and Andrews v. United States, 324 U. S. 49**, sustaining the validity of such option contracts and holding that each served to fix the condemnation award at the agreed valuation, that respondent, on May 17, 1945, paid into court the deficiency of $20,400.00. And then respondent, having utilized the statute aforesaid for its purposes, and having reaped the benefits flowing to it therefrom,

sought to avoid the payment of interest as required by its terms. But the District Court, in conformity with its opinion (R. 249), which, we submit, is thoroughly sound and unassailable, entered judgment awarding petitioners $35,000.00 as for the agreed value of the land as of the date of the declaration of taking, together with interest on said $20,400.00, at six per cent, for the period of nearly four years that the same had been withheld from the registry of the court (R. 267). It is respectfully submitted that, upon this record, that judgment is entirely proper, and that the Court of Appeals grieviously erred in reversing it.

The pertinent provisions of the Declaration of Taking Statute (Act of February 26, 1941, 46 Stat. 1421, 40 U. S. C. A. sec. 258a) are as follows:

> "Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute * * * shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court."

That there was a taking of the lands, within the contemplation of the statute, by the filing of said declaration of taking and the entry of judgment of taking thereon,

cannot be denied. The absolute, fee simple title to the lands became thereby vested in respondent, and the claims of all persons whomsoever thereto were transferred from the land to the funds paid or to be paid into court. But since respondent, at the institution of the suit, paid into court only approximately forty per cent. of the amount of the final award as for the value of the property at the time of the taking, by the express terms of the statute petitioners are entitled to the interest awarded them by the District Court.

The statute is declaratory of the constitutional right of an owner not to have his property taken for a public use without just compensation. It is fundamental that wherever private property is taken by the United States for a public use, the owner's right to interest, or a fair equivalent, on so much of the subsequent award of damages as was not paid or made available to him at the time of the taking, automatically attaches itself to such award. Shoshone Tribe of Indians v. United States, 299 U. S. 476; Jacobs v. United States, 290 U. S. 13; Seaboard Air Line R. Co. v. United States, 261 U. S. 299; Brooks-Scanlon Corp. v. United States, 265 U. S. 106; United States v. Rogers, 255 U. S. 163. The owner is not limited to the value of the property at the time of the taking, but is entitled, as a part of the just compensation guaranteed to him by the Fifth Amendment to the Constitution of the United States, to such additional sum as will produce the full equivalent of that value paid cotemporaneously with the taking. Jacobs v. United States, 290 U. S. 13; Phelps v. United States, 274 U. S. 341; Liggett & Myers Co. v. United States, 274 U. S. 215; Brooks-Scanlon Corp. v. United States, 265 U. S. 106.

In **Shoshone Tribe of Indians v. United States, 299 U. S. 476**, where, as a result of the breach of treaty stipulations, the Shoshone Tribe had been excluded by the Government from the possession and enjoyment of an undivided one-

half interest in the tribal lands, constituting an appropriation of property within the meaning of the Fifth Amendment, this Court (299 U. S., l. c. 497) said:

> "**Given such a taking, the right to interest or a fair equivalent attaches itself automatically to the right to an award of damages.** Jacobs. v. United States, supra; Phelps v. United States (274 U. S. 341; Brooks-Scanlon Corp. v. United States, 265 U. S. 106, 123; Seaboard Air Line Co. v. United States, 261 U. S. 299, 306. These cases distinguish United States v. North American Co., 253 U. S. 330, cited by the Government, which 'rested upon its special facts.' Jacobs v. United States, supra." (Emphasis ours.)

In the leading case of **Jacobs v. United States, 290 U. S. 13**, there was a partial taking of the landowners' lands for flowage purposes without condemnation, and they brought suit to recover compensation. As to the right to interest, this Court (290 U. S., l. c. 17), after pointing out that the suits were based on the landowners' right to the just compensation guaranteed by the Fifth Amendment, said:

> "The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive and includes all elements, 'and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation.' **The owner is not limited to the value of the property at the time of the taking; 'he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking.'** Interest at a proper rate 'is a good measure by which to ascertain the amount so to be added.' Seaboard Air Line R. Co. v. United States, 261 U. S. 299, 306." (Emphasis ours.)

Such was the law of the land long prior to the enactment of the Declaration of Taking Statute (Act of Febru-

ary 26, 1931, 46 Stat. 1421, 40 U. S. C. A., sec. 258a). And it is the law applicable to the issue involved in this case. The statute is declaratory thereof, fixing the interest rate at six per cent. It provides, in substance, that **the judgment shall include, as a part of just compensation, interest at six per cent per annum on that part, if any, of the amount finally awarded as the value of the property as of the date of taking that was not paid into court at the time of the taking.** It follows that petitioners, in this suit under the statute, are lawfully entitled to interest at six per cent per annum on that part of the amount finally awarded as the value of the property at the time of the said taking that was withheld from the registry of the court for nearly four years.

It is plain, we submit, that the decision of the Court of Appeals herein denying petitioners' right to interest is erroneous, violative of the statute aforesaid, operates to deprive these petitioners of their property without the just compensation guaranteed by the Fifth Amendment to the Constitution of the United States, and is in direct conflict with the decisions of this Court to which we have referred above.

Certainly this is true unless petitioners have in some way waived or forfeited their right to such interest. It is submitted, however, that for the reasons to be hereinafter shown, this record contains nothing to warrant a holding that there was any such waiver or forfeiture.

II.

The ruling of the Court of Appeals that petitioners are not entitled to interest on that part of the amount finally awarded as the value of the property at the time of the taking that was withheld from the registry of the court for nearly four years, proceeds, in part, on the theory that the purchase price named in the prior option contract,

which became the amount of the final award, constituted "the agreed equivalent of just compensation for the taking," whether by condemnation or purchase (R 302). Such ruling in support of which the court cites no authority is, we submit, manifestly unsound. There is nothing whatsoever in the contract evidencing the intention that the contract price should constitute full compensation for the taking of the land in the event that respondent should elect to proceed by condemnation and should not promptly pay into court the full amount of the contract price. **Indeed, the contract evidences precisely the contrary intention.** The contract says nothing about **compensation,** but does provide that, in the event of condemnation, **the agreed valuation** shall constitute the amount of the **award** in the condemnation proceeding. Said ruling of the Court of Appeals evidences, we submit, an entirely erroneous conception by the court of the part played by the option contract after respondent had instituted the condemnation suit. After respondent had repudiated the contract and had instituted its suit to condemn the property, **the contract performed merely the function of fixing the award in that proceeding, as for the value of the property at the time of the taking, at the agreed valuation named in the contract. It performed simply the function ordinarily performed in a condemnation suit by commissioners or a jury.** This plainly appears from the opinion of this Court in Muschany v. United States and Andrews v. United States, 324 U. S. 49, and accords with this Court's opinion in Danforth v. United States, 308 U. S. 271.

And the ruling of the Court of Appeals that the purchase price named in the contract constituted the agreed equivalent of just compensation for the taking, though the major portion thereof was not paid into court in this proceeding until years after the taking, is in direct conflict with the decision of the United States Circuit Court of Appeals for the Fifth Circuit in **United States v. Baugh, 149 Fed. (2) 190.**

In the **Baugh case** (149 Fed. [2] 190) a condemnation proceeding was instituted by the United States under the Second War Powers Act (50 U. S. C. A., Sec. 632, Appendix) to acquire a tract of land for military purposes, and an order for immediate possession was entered on the day the suit was filed. Thereafter the owners of the various parcels in the area entered into stipulations with the United States whereby the landowners waived a hearing before commissioners and consented to a decree vesting title in the plaintiff, and the parties agreed upon certain sums as just compensation to be awarded for the taking of their property. Thereafter a delay of about eight months ensued before the plaintiff made deposit of the funds into court. In holding that the United States was liable for interest, the Court of Appeals (149 U. S. [2], l. c. 192) said:

> "The stipulation merely had the effect of relieving the Government from having to make proof as to what was just compensation and of running the risk of having an amount fixed which might be unsatisfactory. The stipulations eliminated controversies, but otherwise the condemnation suit proceeded to final judgment. There is no mention in the stipulations that interest was, or was not, included. **Just compensation in condemnation cases means just compensation at the time of taking of possession, and when the parties reduced to writing a stipulation fixing just compensation there seems to be no reason to conclude that the landowner impliedly waived any legal right.**" (Emphasis ours.)

And later on in the opinion (149 Fed. [2], l. c. 193) the Court, referring to the landowners, said:

> "**Their right to have interest is found in the Constitution and is neither found nor lost in the contract.** (Emphasis ours.)
>
> " 'The Constitution no more permits the deprivation of money without just compensation than it does

the deprivation of the use of land without just compensation.'"

The Baugh case cannot be there distinguished on the ground that there the agreement was entered into during the pendency of a condemnation suit, as the Court of Appeals doubtfully suggests (R. 303). The opinion therein evidences a full understanding and appreciation of the fundamental law of the land announced and applied in the opinions of this Court referred to above.

III.

The ruling of the Court of Appeals that the landowners by successfully insisting upon the validity of the option contract, as fixing the proper condemnation award, converted this case from a condemnation suit "into one controlled, as to the amount of their recovery, by the terms of the purchase contract," and that hence to allow the interest claimed by the landowners would be tantamount to allowing interest on a contract obligation of the United States not providing for interest (R. 302, 303), is likewise plainly unsound. **The suit could not thus be converted into something other than that which the record throughout plainly shows it to be. It remained a conventional condemnation suit**; one in which the award as for the value of the property at the time of the taking was required to be fixed in accordance with the agreement of the parties, rather than by commissioners or a jury. Muschany v. United States and Andrews v. United States, 324 U. S. 49; Danforth v. United States, 308 U. S. 271.

And the judgment of the District Court awarding petitioners the interest sought by them in no way does violence to the rule that interest does not run upon a claim against the United States in the absence of a contract or statute evidencing a contrary intention. In this case in-

terest was neither claimed nor allowed on a contract obligation of the United States. It was claimed and properly allowed in a condemnation suit, on that part of the agreed award that was not paid into court at the time of the taking, in conformity with the very statute under which the suit was brought, and as constituting a part of the just compensation guaranteed by the Fifth Amendment to the Constitution of the United States. In such a situation, the right to interest has its foundation in the constitutional guaranty of just compensation and in the statute declaratory thereof. It is not found in nor lost by the prior contract between the parties. United States v. Baugh, 149 Fed. (2) 190, 193.

IV.

And though petitioners' claim to interest is not based upon the option contract, it is in no wise inconsistent therewith, for the contract implied, as a matter of law, that if respondent should resort to condemnation and should not, upon the institution of the suit, pay the full agreed valuation into court as the amount of the agreed award, petitioners would be entitled to interest **in accordance with the law of the land applicable to condemnation proceedings.** The law of the land is read into every contract and becomes an integral part thereof. Farmers and Merchants Bank of Monroe v. Federal Reserve Bank, 262 U. S. 649; McCullough v. Virginia, 172 U. S. 102, 124; Ogden v. Saunders, 25 U. S. (Wheat. 12) 213; United States v. Baugh, 149 Fed. (2) 190; 17 C. J. S. 782; 12 Amer. Jur. 769, sec. 240.

In **Farmers and Merchants Bank of Monroe v. Federal Reserve Bank, 262 U. S. 649, l. c. 660,** this Court said:

> "Laws which subsist at the time and place of the making of the contract, and where it is to be per-

formed, enter into and form a part of it as fully as if they had been expressly referred to or incorporated therein."

In **United States v. Baugh, supra, 149 Fed. (2) 190,** the court, in considering the effect of the stipulations there entered into, on the question of the landowners' right to interest under the law applicable to eminent domain cases, said:

"The settled law of the land at the time the contract is made is a part of the contract and must be read into it."

Petitioners respectfully submit that the situation presented by this record is one calling loudly for interference by this Court to the end that a decision of a Court of Appeals out of harmony with decisions of this Court and with a decision of another Court of Appeals may not be permitted to stand, and that the issue involved herein may be finally resolved in keeping with the law of the land and in consonance with right and justice.

Petitioners therefore pray that this Court issue its writ of certiorari herein, and that the judgment of the United States Circuit Court of Appeals for the Eighth Circuit herein, rendered on April 9, 1946, be reversed.

Respectfully submitted,

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